

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : Civil No. 18-6840
Plaintiff, :
v. :
WALTER SCHILLER and :
DENISE SCHILLER, :
Defendants. :

COMPLAINT

The United States of America, pursuant to 26 U.S.C. § 7401, with the authorization of the Secretary of the Treasury and at the direction of the Acting Attorney General of the United States, brings this action to reduce to judgment federal income tax liabilities of Walter Schiller and Denise Schiller. In support thereof, the United States alleges as follows:

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1340, and 1345, and 26 U.S.C. § 7402.
2. The defendants Walter Schiller and Denise Schiller reside within the jurisdiction of this Court. The defendants are married to each other.
3. As set forth in the table below, a delegate of the Secretary of the Treasury made assessments against defendants Walter Schiller and Denise Schiller, jointly and severally, for federal income taxes, penalties, and interest in the following amounts, which have balances due with accruals and costs as of November 3, 2018, as follows:

Federal Income Tax Period	Assessment Date	Assessment Type	Amount Assessed	Balance due as of 11/03/2018
2007	11/03/2008	Tax Assessment	\$91,945.00	\$102,078.87
	11/03/2008	Estimated Tax Penalty	\$1,383.12	
	11/03/2008	Late Filing Penalty	\$10,623.37	
	11/03/2008	Late Payment Penalty	\$1,652.52	
	11/03/2008	Interest	\$1,797.14	
	10/05/2009	Late Payment Penalty	\$4,721.50	
	03/22/2010	Late Filing Penalty	\$148.00	
	03/22/2010	Additional Tax Assessed	\$578.00	
	10/08/2012	Late Payment Penalty	\$5,577.98	
	10/14/2013	Interest	\$13,457.41	
	10/13/2014	Interest	\$2,649.63	
	10/19/2015	Interest	\$2,783.40	
	10/17/2016	Interest	\$3,331.56	

4. Notice of the liabilities listed in paragraph 3, above, and demand for payment was properly made upon defendants Walter Schiller and Denise Schiller.

5. Despite such notice and demand, defendants Walter Schiller and Denise Schiller have failed, neglected, or refused to fully pay the liabilities and there remains due and owing \$102,078.87, plus statutory additions that continue to accrue from and after November 3, 2018.

6. Pursuant to 26 U.S.C. §§ 6331(i)(5), 6331(k)(2), and 6503(a)(1), the running of the ten-year statutory period of limitations was suspended for the tax year ending December 31, 2007, during the pendency of a proposed installment agreement. The installment agreement was processed as pending on or about December 7, 2017, and rejected on or about October 30, 2018. As a result, the statutory period of limitations was extended for at least 357 days. After taking these extensions into consideration, the statutory period of limitations for the income tax year 2007 was extended from November 3, 2018, to at least October 26, 2019. Accordingly, this action is timely commenced.

7. In the alternative, pursuant to 26 U.S.C. §§ 6331(i)(5), 6331(k)(2), and 6503(a)(1), the running of the ten-year statutory period of limitations was suspended for the tax year ending December 31, 2007, following the termination of an installment agreement. The installment agreement was processed as pending and established on or about December 7, 2017, and then terminated on or about October 30, 2018. As a result, the statutory period of limitations was extended for at least 30 days. After taking these extensions into consideration, the statutory period of limitations for the income tax year 2007 was extended from November 3, 2018, to at least December 3, 2018. Accordingly, this action is timely commenced.

WHEREFORE, the plaintiff United States of America requests that this Court:

A. enter judgment in favor of the plaintiff United States of America and against the defendants Walter Schiller and Denise Schiller, jointly and severally, in the amount of \$102,078.87, plus statutory additions from and after November 3, 2018, including interest pursuant to 26 U.S.C. §§ 6601, 6621, 6622, and 28 U.S.C. § 1961(c), for their unpaid income tax liability for the tax year ending December 31, 2007; and

B. award the United States its costs and such other and further relief as the Court deems just and proper.

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General
Tax Division, U.S. Department of Justice

/s/ James Yu
JAMES YU
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55
Washington, D.C. 20044
202-307-6460 (v)
202-514-5238 (f)
James.Yu@usdoj.gov

Of Counsel:
RICHARD P. DONOGHUE
United States Attorney

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
UNITED STATES OF AMERICA(b) County of Residence of First Listed Plaintiff _____
*(EXCEPT IN U.S. PLAINTIFF CASES)***DEFENDANTS**
WALTER SCHILLER and DENISE SCHILLERCounty of Residence of First Listed Defendant Queens
*(IN U.S. PLAINTIFF CASES ONLY)*NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.Attorneys (*If Known*)(c) Attorneys (*Firm Name, Address, and Telephone Number*)
James Yu, US Department of Justice, Tax Division
PO Box 55
Washington, DC 20044 - (202) 307-6460**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	Labor	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL PROPERTY	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	FEDERAL TAX SUITS	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other	IMMIGRATION	
		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 462 Naturalization Application	
		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 465 Other Immigration Actions	
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation
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VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (<i>Do not cite jurisdictional statutes unless diversity</i>): 26 USC 7401
	Brief description of cause: Reduce tax liabilities to judgment

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$ 102,078.87	CHECK YES only if demanded in complaint: JURY DEMAND:
			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

VIII. RELATED CASE(S) IF ANY	<i>(See instructions):</i>	JUDGE _____	DOCKET NUMBER _____

DATE 11/30/2018	SIGNATURE OF ATTORNEY OF RECORD /s/ James Yu
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FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, James Yu, counsel for United States of America, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
the complaint seeks injunctive relief,
 the matter is otherwise ineligible for the following reason Tax matter

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

n/a

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: _____

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/ James Yu

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (*Defendant's name and address*)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (*name of individual and title, if any*) _____
was received by me on (*date*) _____.

I personally served the summons on the individual at (*place*) _____
on (*date*) _____; or

I left the summons at the individual's residence or usual place of abode with (*name*) _____,
_____, a person of suitable age and discretion who resides there,
on (*date*) _____, and mailed a copy to the individual's last known address; or

I served the summons on (*name of individual*) _____, who is
designated by law to accept service of process on behalf of (*name of organization*) _____
on (*date*) _____; or

I returned the summons unexecuted because _____; or

Other (*specify*): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

Civil Action No.

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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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on (*date*) _____; or

I left the summons at the individual's residence or usual place of abode with (*name*) _____,
_____, a person of suitable age and discretion who resides there,
on (*date*) _____, and mailed a copy to the individual's last known address; or

I served the summons on (*name of individual*) _____, who is
designated by law to accept service of process on behalf of (*name of organization*) _____
on (*date*) _____; or

I returned the summons unexecuted because _____; or

Other (*specify*): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc: